

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

was struck by a forklift in the performance of duty. OWCP accepted the claim for cervical strain, right shoulder strain, a left shoulder contusion and a right chest wall contusion. Appellant stopped work on October 25, 2005 and returned to full-time modified employment on July 2, 2006.<sup>2</sup>

OWCP accepted that appellant sustained an employment-related recurrence of disability beginning January 14, 2008. It paid her compensation from January 15 to March 17, 2008. Appellant returned to full-time work on March 18, 2008 but decreased her work time to six hours per day beginning March 28, 2008. OWCP paid her compensation for intermittent time lost from work March 25 through September 16, 2008.

In a disability certificate dated November 12, 2008, Dr. Andrew M. Giovannini, an attending Board-certified orthopedic surgeon, diagnosed cervical strain, a right rotator cuff tear, a left shoulder sprain, cervical radiculopathy, bilateral carpal tunnel syndrome, lumbar sprain with radiculopathy and bilaterally absent Achilles deep tendon reflexes. He found that appellant was disabled from work until January 30, 2009.

On February 13, 2009 appellant filed a claim for compensation for total disability beginning November 18, 2008. On January 28, 2009 Dr. Giovannini provided the same diagnoses and extended her disability until March 30, 2009.

By letter dated February 25, 2009, OWCP informed Dr. Giovannini that his disability slips were insufficient to establish that appellant was disabled due to her accepted work injury and requested a comprehensive medical report. It noted that on March 5, 2008 an OWCP referral physician found that she could work full-time limited duty.<sup>3</sup>

In a March 4, 2009 response, Dr. Giovannini stated that appellant was “temporarily totally disabled as a result of not one but three reported injuries incurred while working for the [employing establishment].” He discussed her history of a 2005 occupational injury to her lumbar sprain as a result of repetitive work, the injury on October 21, 2005 to her neck, chest, back and shoulders when she was struck by a forklift and a September 15, 2008 injury causing multiple contusions when she fell entering the employing establishment. Dr. Giovannini additionally diagnosed carpal tunnel syndrome. He summarized the results of diagnostic studies and noted that appellant continued to experience problems with the right shoulder and upper extremity, neck, low back and knee. Dr. Giovannini provided findings on physical examination. He advised that she might need arthroscopic surgery on her knee and that a “[t]entative back to work date had been set at November 17, 2008.”

By decision dated March 11, 2009, OWCP denied appellant’s claim for compensation beginning November 8, 2008. It found that Dr. Giovannini did not provide sufficient medical rationale for his opinion or explain why she was unable to work as of November 8, 2008.

---

<sup>2</sup> OWCP also accepted appellant’s September 2005 occupational disease claim for lumbar strain under another file number.

<sup>3</sup> On March 5, 2008 Dr. Joel W. Renbaum, a Board-certified orthopedic surgeon, determined that appellant had continuing residuals from her October 21, 2005 work injury and her 2005 occupational disease. He advised that she could work full time with restrictions.

On March 25, 2009 Dr. Giovannini found that appellant was disabled beginning September 19, 2008 and could resume work on March 30, 2009. On March 31, 2009 he indicated that she tried to work on March 30, 2009 but left after three hours because of pain in her hands, shoulders and neck. On examination Dr. Giovannini found carpal tunnel syndrome and right shoulder atrophy, pain, crepitus and weakness. He related that it was difficult for appellant to work without using her hands and found that she was disabled for three months.

On April 13, 2009 Dr. Giovannini reviewed OWCP's March 11, 2009 decision. He discussed appellant's history of an injury on September 15, 2008 when she fell entering her work location. Dr. Giovannini noted that she complained of pain in her right shoulder and right hand and stated:

"Nevertheless, [appellant] continued working with restrictions until November 18, 2008. At that time the effects of the September 15, 2008 work injury were considered to be the immediate cause [of her] symptoms and temporary total disability. However, prior work injuries that all remain symptomatic (outlined in report dated November 3, 2008) were a contributory cause as she would, with reasonable medical probability, not have the same degree of temporary total disability barring those preexisting work injuries that remained symptomatic. In other words, had [appellant] not sustained prior injuries at work in the same body parts and from which she had not fully recovered, the effect of the incident of September 15, 2008 would not have been nearly as severe and it would have been accompanied by a lesser degree of disability."

Dr. Giovannini related that appellant's current complaints were directly related to her October 21, 2005 employment injury "in view of the aggravation of complaints that stemmed [from the October 21, 2005] injury on September 15, 2008." He further attributed the work stoppage on March 30, 2009 to her October 21, 2005 work injury. Dr. Giovannini stated, "As noted above, temporary total disability between November 18, 2008 and March 30, 2009 was immediately caused by the work injury of September 15, 2008, however, there were major contributing factors from residual disability produced by the work injuries sustained prior to that date, especially that of November 21, 2005 because complaints involved the same parts of the body."

On April 17, 2009 appellant requested reconsideration. By decision dated June 24, 2009, OWCP denied modification of its March 11, 2009 decision. It noted that Dr. Giovannini discussed appellant's October 21, 2005 and September 15, 2008 employment injuries but did not provide rationale regarding why she was unable to perform her modified employment beginning November 18, 2008.

In a disability certificate dated June 29, 2009, Dr. Giovannini advised that appellant was unable to work until July 31, 2009.<sup>4</sup>

---

<sup>4</sup> Appellant retired from the employing establishment effective July 31, 2009.

On August 1, 2009 appellant requested reconsideration. In a nonmerit decision dated August 26, 2009, OWCP denied her request for reconsideration as she did not submit evidence sufficient to warrant reopening her case for further merit review under 5 U.S.C. § 8128.

In a report dated June 22, 2010, Dr. Giovannini described his treatment of appellant due to her October 21, 2005 work injury and his findings on examination. He related that she “suffered a spontaneous and marked increase in symptoms of the previous injury dated October 21, 2005.” Dr. Giovannini reviewed the results of a left shoulder magnetic resonance imaging scan study dated October 3, 2006, which showed minimal rotator cuff tendinitis and a March 6, 2006 electromyogram which revealed carpal tunnel syndrome and acute right cervical radiculopathy. He diagnosed cervical strain, a right rotator cuff tear, left shoulder sprain, cervical radiculopathy and bilateral carpal tunnel syndrome. Dr. Giovannini related that on January 14, 2008 appellant complained of increased pain and that he diagnosed carpal tunnel syndrome on examination and severe cervical spasm. He stated:

“When [appellant] experienced recurrence she was known to have a documented [c]arpal [t]unnel [s]yndrome and lifting had been restricted to 5 pounds; carrying to 10 pounds. Repetitive use of the hands and handling, firm grip or fine manipulation remained in place. [Appellant] also has incurred another work injury on November 11, 2006, which resulted in a cervical and lumbar disc herniation with neurological deficit and both upper and lower extremities. This also was taking a turn for the worse when reexamined on January 14, 2008. An update with respect to the November 2006 injury has been submitted and is dated February 27, 2008.

“There is a direct causal relationship between the industrial injury of the recurrence of January 14, 2008 and [appellant’s] current complaints.”

On June 22, 2010 appellant requested reconsideration. By decision dated July 22, 2010, OWCP denied modification of its June 24, 2009 decision. It found that Dr. Giovannini did not directly address the relevant issue of whether she could work beginning November 8, 2008 in her modified position. OWCP further noted that appellant did not have an accepted claim for carpal tunnel syndrome or a known work injury on November 11, 2006.

### **LEGAL PRECEDENT**

The term disability as used in FECA<sup>5</sup> means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>6</sup> Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>7</sup> When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the

---

<sup>5</sup> 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

<sup>6</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>7</sup> *Id.*

employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>8</sup> The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employee's to self-certify their disability and entitlement to compensation.<sup>9</sup>

### ANALYSIS

OWCP accepted that appellant sustained cervical strain, right shoulder strain and contusions of the left shoulder and right chest wall due to an October 21, 2005 employment injury. On October 25, 2005 she stopped work and on July 2, 2006 returned to work in a limited-duty capacity. OWCP accepted that appellant sustained a recurrence of disability beginning January 14, 2008. Appellant returned to full-time work on March 18, 2008 but reduced her work schedule to six hours beginning March 28, 2008. OWCP paid her compensation for intermittent time lost from work March through September 2008.

Appellant stopped work again on November 18, 2008 and filed a claim for wage-loss compensation beginning that date. In disability certificates dated November 12, 2008 and January 28, 2009, Dr. Giovannini diagnosed cervical strain, a right rotator cuff tear, left shoulder sprain, cervical and lumbar radiculopathy and bilateral carpal tunnel syndrome. He found that appellant was disabled from work. Dr. Giovannini, however, did not address the cause of her disability. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>10</sup>

On March 4, 2009 Dr. Giovannini asserted that appellant was disabled due to three work injuries, a 2005 occupational injury to her lumbar spine, her October 21, 2005 injury and a September 15, 2008 injury that resulted in multiple contusions. He reviewed the diagnostic studies and the findings on examination. Dr. Giovannini recommended possible arthroscopic surgery and indicated that appellant might be able to return to work on November 17, 2008. He did not explain, however, how her October 21, 2005 employment injury caused or contributed to her disability from employment beginning November 18, 2008. A physician must provide an opinion on whether the employment incident described caused or contributed to claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rationale.<sup>11</sup>

In a March 25, 2009 disability certificate, Dr. Giovannini opined that appellant was disabled from September 19, 2008 to March 30, 2009. He determined that she had to leave work on March 31, 2009 due to hand, shoulder and neck pain. On examination Dr. Giovannini found carpal tunnel syndrome and right shoulder atrophy and pain. He asserted that appellant was

---

<sup>8</sup> *Id.*

<sup>9</sup> *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>10</sup> *Conrad Hightower*, 54 ECAB 796 (2003).

<sup>11</sup> *John W. Montoya*, 54 ECAB 306 (2003).

disabled for three months. Dr. Giovannini did not, however, attribute any disability to her October 21, 2005 employment injury and thus his opinion is of little probative value.

On April 13, 2009 Dr. Giovannini asserted that a September 15, 2008 employment injury was the “immediate cause” of appellant’s disability beginning November 18, 2008. He found, however, that all work injuries contributed to her disability as her continued symptoms from the prior injuries increased the severity of the September 15, 2008 injury. Dr. Giovannini explained that appellant’s disability from November 18, 2008 to March 30, 2009 was due to a September 15, 2008 employment injury but that a November 21, 2005 injury was also a major contributing cause as the “complaints involved the same parts of the body.” He did not, however, specifically explain how her October 21, 2005 work injury caused or contributed to her disability from her modified employment other than to note that the same parts of the body were injured in all employment injuries. The issue of whether a claimant’s disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>12</sup> Dr. Giovannini’s conclusion is unsupported by rationale is thus insufficient to meet appellant’s burden of proof.<sup>13</sup>

In a report dated June 22, 2010, Dr. Giovannini found that appellant sustained a spontaneous increase in symptoms due to her October 21, 2005 employment injury. He provided findings on examination from a January 14, 2008 office visit and diagnosed cervical strain, a right rotator cuff tear, left shoulder sprain, cervical radiculopathy and bilateral carpal tunnel syndrome. Dr. Giovannini discussed a November 11, 2006 purported work injury and found that appellant sustained a recurrence of disability on January 14, 2008 due to her work injury. He did not address, however, her disability from employment beginning November 18, 2008 or explain why she was unable to perform her modified employment. Medical conclusions unsupported by rationale are of diminished probative value.<sup>14</sup> Consequently, Dr. Giovannini’s report is of little probative value.

Appellant may submit new evidence or argument with a written request for reconsideration within one year of this merit decision pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established that she was disabled beginning November 18, 2008 causally related to her October 21, 2005 employment injury.

---

<sup>12</sup> See *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>13</sup> See *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

<sup>14</sup> *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 22, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2011  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board